

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

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PLM-11
Mr. Riedinger

FILE: B-195250

DATE: January 23, 1980

MATTER OF: Major Donald E. Shaff, USAF (Retired)
(Deceased)

DIGEST: A retired service member, a U.S. citizen residing in a foreign country, traveled to another foreign country and secured an ex parte divorce from his wife who was residing in the U.S. He then returned to the first foreign country, married a citizen of that country, continued residing there and elected to participate in the Survivor Benefit Plan (SBP). After his death the first spouse challenged the SBP payments being made to the second spouse, claiming that the divorce and subsequent remarriage were invalid. The validity of a marriage is determined by the law of the jurisdiction where contracted, including whether there are impediments to the marriage. Because of the uncertainty of the marital status of either claimant until that status issue is resolved by the courts further payments may not be made to either claimant.

10 This action is in response to a request for advance decision from the Air Force Accounting and Finance Center concerning the proper payee of a survivor annuity under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, in the case of the late Major Donald E. Shaff, USAF, Retired. This matter has been assigned Control Number DO-AF-1323, by the Department of Defense Military Pay and Allowance Committee.

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The facts show that Major Shaff, a United States citizen, retired from the United States Air Force in 1964. At that time he was married to Lois. In 1967 he went to live in Columbia while Lois apparently remained in the United States. On March 2, 1973, he received an ex parte divorce from Lois in San Cristobal, Dominican Republic, and returned to Columbia. On April 5, 1973, he married a Colombian citizen, Luz, in Bogota, Columbia, and continued residing there.

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As authorized by section 3(b) of Public Law 92-425, 10 U.S.C. 1448 (note), the member elected to participate in the SBP on May 8, 1973, electing coverage for spouse and children, naming as his wife, Luz, and his son, Donald. Another child, Leo, was born January 25, 1974.

In late 1977 or early 1978, Major Shaff, accompanied by his wife, Luz, and their children, traveled to the United States so that he could receive medical treatment. He died on March 28, 1978, while a patient in the Veterans Administration Hospital, Batavia, New York. Arrears of retired pay were paid to Luz as widow and an SBP annuity was established in her favor as the spouse beneficiary, effective March 29, 1978. Survivor Benefit Plan payments were made to her through October 1978 and then suspended because a claim was made by the member's first wife, Lois, as surviving spouse, challenging the validity of his Dominican Republic divorce.

It has been suggested that the rulings of this Office regarding divorces obtained by United States citizens in foreign countries would control.

We have consistently taken the position that foreign divorce decrees are of doubtful validity. Therefore, unless one of the parties to the divorce is a bona fide resident of the country where the divorce is granted, or unless the divorce is recognized by a court of competent jurisdiction in the United States, benefits will not be initiated or terminated based on it. 36 Comp. Gen. 121 (1956), and 55 Comp. Gen. 533 (1975).

The cases in which this position is taken usually involve residents of the United States who travel to foreign countries for the express purpose of obtaining the divorce and returning to the United States and who then remarry. Often the purpose for obtaining these foreign divorces is merely to circumvent the more stringent requirements for divorce in the States of the United States. Generally, it is for that reason that we require recognition of the divorce by a court of competent jurisdiction here in the United States.

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Major Shaff, although a United States citizen, was a longtime resident of Columbia, and was so at the time he traveled to the Dominican Republic to secure his divorce from Lois. It was upon his return to Columbia that he married a Columbian citizen under Columbian law. The different circumstances in this case make presentation of various arguments by the two claimants possible. However, the circumstances do not make it clear which of the two claimants should be recognized as Major Shaff's widow.

Therefore, it is our view that there is too much uncertainty as to the marital status of either claimant to permit further payments in the absence of proceedings in a court of competent jurisdiction to decide that issue. 45 Comp. Gen. 155 (1965) and 56 Comp. Gen. 533 (1975). See also Longwill v. United States, 17 Ct. Cl. 288 (1881) and Charles v. United States, 19 Ct. Cl. 316 (1884).

Accordingly, on the record before us, neither Lois nor Luz may be paid an SBP annuity and the voucher accompanying the submission will be retained here. However, annuity payments already made to Luz prior to receipt of the claim of Lois, need not be recouped at this time.

Both parties are advised that their claims may not be allowed on the basis of the evidence presented. They may of course pursue their legal remedies in the Court of Claims or other court of competent jurisdiction.



For The Comptroller General
of the United States